

² Appellant submitted new medical evidence accompanying his appeal. The Board may not consider new evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant may submit such evidence to OWCP accompanying a valid request for reconsideration.

FACTUAL HISTORY

On February 23, 2012 appellant, then a 57-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on February 14, 2012 he sustained a back strain when carrying a bag of tools to the fourth floor of a cadet barracks. He stopped work at the time of injury and sought emergency medical attention.

In a February 24, 2012 letter, OWCP advised appellant of the evidence needed to establish his claim, including a factual statement describing the work factors alleged to have caused the claimed injury, and a report from his attending physician explaining how and why the identified incident would cause the claimed back injury. Appellant was afforded 30 days to submit such evidence.

Appellant submitted a February 14, 2012 sick slip signed by his supervisor, stating that appellant experienced “back pain after moving tool to 4th floor” that day in the line of duty and would seek medical attention. An employing establishment healthcare provider whose signature is illegible examined appellant on February 14, 2012. The history related an onset of right-sided back pain after appellant lifted tools with his left hand, noting that he had a history of degenerative cervical disc disease. The provider diagnosed lumbago.

On February 15, 2012 a healthcare provider whose signature is illegible held appellant off work due to a lumbar sprain related to the February 14, 2012 lifting incident. A Dr. Dorfman, an employing establishment physician, released appellant to full duty as of March 5, 2012.

In a February 17, 2012 form report, Dr. Harvey L. Seigel, an attending Board-certified orthopedic surgeon, diagnosed a back strain and held appellant off work. He checked a box “yes” indicating his support for causal relationship between the February 14, 2012 incident and the diagnosed back injury. Dr. Seigel released appellant to full duty as of March 5, 2012.³

By decision dated March 28, 2012, OWCP denied appellant’s claim. It found that he submitted insufficient factual evidence to establish that the claimed February 14, 2012 incident occurred at the time, place and in the manner alleged.

In an April 5, 2012 letter, appellant requested a review of the written record. He related that on February 14, 2012 he experienced right-sided lumbar pain while carrying tools up stairs. Appellant placed his tools on the floor after the onset of symptoms, reported the injury to his supervisor and sought medical attention. He submitted a February 14, 2012 form report from Dr. Siegel in which he diagnosed lumbar strain superimposed on degenerative disc disease. Dr. Siegel checked a box “yes” indicating his support for a causal relationship between the lumbar strain and the lifting incident earlier that day.

By decision dated and finalized June 28, 2012, OWCP’s hearing representative affirmed the March 28, 2012 decision as modified. The hearing representative found that appellant submitted sufficient factual evidence to establish that the February 14, 2012 lifting incident

³ Appellant also submitted employing establishment audiograms noting a significant threshold shift, requiring additional testing. There is no hearing loss issue before the Board on the present appeal.

occurred at the time, place and in the manner alleged. The hearing representative found, however, that the medical evidence submitted did not contain sufficient explanation to establish that the accepted February 14, 2012 incident caused the claimed lumbar injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

ANALYSIS

Appellant claimed that on February 14, 2012 he sustained a lumbar injury while carrying heavy tools and injured his left shoulder when reaching into a mail case. Following a review of the written record, OWCP accepted that the February 14, 2012 incident occurred at the time, place and in the manner alleged, it denied the claim finding that he submitted insufficient medical evidence to establish causal relationship.

Appellant submitted February 14 and 15, 2012 reports from healthcare providers whose signatures are illegible. As these forms cannot be properly identified as being prepared by a physician, they cannot constitute probative medical evidence in this case.⁸

Appellant also submitted reports from Dr. Siegel, an attending Board-certified orthopedic surgeon, who diagnosed a lumbar strain. In February 14 and 17, 2012 form reports, Dr. Siegel checked a box “yes” indicating his support for a causal relationship between the diagnosed lumbar strain and carrying tools up stairs on February 14, 2012. The Board has held that,

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁸ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

without further explanation or rationale, a checked box on a form report is not sufficient to establish causation.⁹ Dr. Siegel did not address how and why carrying tools up stairs would cause the diagnosed lumbar strain. In the absence of such explanation, his opinion is insufficient to establish causal relationship in this case.¹⁰

The Board notes that OWCP advised appellant in a February 24, 2012 letter of the need to submit a report from his attending physician setting forth the medical reasons relating the accepted February 14, 2012 incident to the claimed lumbar strain. Appellant did not submit such evidence. Therefore, he failed to meet his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained a back injury in the performance of duty.

⁹ *Calvin E. King*, 51 ECAB 384 (2000) (the Board held that form reports from a physician who checked a yes box indicating a causal relationship between the claimant's spinal stenosis and his employment had little probative value absent supporting rationale and were insufficient to establish causation). *Debra S. King*, 44 ECAB 203 (1992).

¹⁰ *Deborah L. Beatty*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 28, 2012 is affirmed.

Issued: February 4, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board